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August 1, 2014

Via Email to JGray@InglesideTX.gov

Jim Gray, City Manager
City of Ingleside

Re: Cell Tower Ordinance

Dear Jim:

This will confirm our telephone conference, which included you, me and John Davis, on August 1, 2014. We discussed the cell tower ordinance and after our discussion I made the changes we talked about. The ordinance as revised is attached.

This will confirm that it was decided to leave in place the procedures whereby the P&Z and Council make decisions regarding applications for cell towers which cannot under the ordinance be made by the B.O., rather than making the cell tower applications a special exception to be decided by the BOA.

Sincerely,



Michael G. Morris

MGM:ia
Attachment
403242/8124.01/MGM/835

ORDINANCE # _____

AN ORDINANCE OF THE CITY OF INGLESIDE, TEXAS AMENDING
CHAPTER 78, BY ADDING THERETO PROVISIONS REGULATING
COMMUNICATION/CELL TOWERS AND PROVIDING FOR EFFECTIVE
DATE, READING, SEVERANCE AND PUBLICATION.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Ingleside, Texas:

SECTION 1. AMENDMENT. That Chapter 78 – Zoning, Article V – Supplementary District Regulations of the Code of Ordinances of the City of Ingleside, Texas is hereby amended by adding a new Division 6 and Sections thereunder, which shall read as follows:

Division 6. Telecommunication Facilities.

Sec. 78-500. Definitions. For the purposes of this Division 6, the following words and terms are defined as follows:

Accessory Equipment: Any equipment serving or being used in conjunction with a Telecommunications Facility or Support Structure. This equipment includes, but is not limited to, utility or transmission equipment, power supplies, generators, batteries or other backup power supply sources, cables, equipment buildings, cabinets and storage sheds, shelters or other structures.

Administrative Approval: Permit approval that the Building Official or designee is authorized to grant after Administrative Review, the Building Official being the permitting authority.

Administrative Review: Evaluation of an application by the Building Official or designee.

Antenna: Any structure or device used to retransmit or receive electromagnetic waves for the provision of services including, but not limited to, cellular, paging, personal communications services (PCS) and microwave communications. Such structures and devices include but are not limited to, directional antennas, such as panels, microwave dishes and satellite dishes, and omnidirectional antennas, such as whips. This definition does not apply to broadcast antennas, antennas designed for amateur radio use, or satellite dishes designed for residential or household purposes.

Carrier on Wheels or Cell on Wheels ("COW"): A portable self-contained Telecommunications Facility that can be moved to a location and set up to provide wireless services on a temporary or emergency basis.

Collocation: The act of siting Telecommunications Facilities on an existing structure without the need to construct a new Support Structure and without a Substantial Increase as herein defined.

Council Approval: Permit approval that the Council is authorized to grant after Administrative Review and Planning and Zoning Commission Recommendation, the Council being the permitting authority.

Existing Structure: Previously erected Support Structure or any other structure, including but not limited to, buildings and water tanks, to which Telecommunications Facilities can be attached.

Height: A measurement from the ground to the highest point of the structure being measured.

Major Modifications: Improvements to existing Telecommunications Facilities or Support Structures that result in a Substantial Increase to the Existing Structure. Collocation of new Telecommunications Facilities to an existing Support Structure without Replacement of the structure

shall not constitute a Major Modification.

Minor Modifications: Improvements to Existing Structures that may result in some material change to the Facility or Support Structure but of a level, quality or intensity that is less than a Substantial Increase. Minor Modifications include the Replacement of the structure.

Monopole: A single, freestanding pole-type structure supporting one or more Antennas. For purposes of this Division 6 a Monopole is not a Tower.

Ordinary Maintenance: Work that is undertaken to ensure that Telecommunications Facilities and Support Structures are kept in good operating condition. It includes inspections, testing and modifications that maintain functional capacity, aesthetic and structural integrity; for example the strengthening of a Support Structure's foundation or of the Support Structure itself. It includes replacing equipment with equipment of a similar size, weight, shape and color and Accessory Equipment within an existing Telecommunications Facility. It does not include Minor or Major Modifications.

Replacement: Constructing a new Support Structure of proportions and of equal height or such other height that would not constitute a Substantial Increase to a pre-existing Support Structure in order to support a Telecommunications Facility or to accommodate Collocation and removing the pre-existing Support Structure.

Stealth Telecommunications Facility: Any Telecommunications Facility that is integrated and concealed as an aesthetic or architectural feature of an Existing Structure or any new Support Structure designed so that the purpose of the Facility or Support Structure provides visual mitigation. Examples include the use of church steeples, buildings, outdoor signs, electric light poles, and

disguise as trees.

Substantial Increase: Occurs when:

- (1) the mounting of the proposed antenna on an Existing Structure would increase the existing height of the Existing Structure by more than 10%, or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty feet, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph as necessary to avoid interference with existing antennas; or
- (2) the mounting of the proposed antenna would involve the installation of more than the standard number of new equipment cabinets for the technology involved, not to exceed four, or more than one new equipment shelter; or
- (3) the mounting of the proposed antenna would involve adding an appurtenance to the body of the Existing Structure that would protrude from the edge of the Existing Structure more than twenty feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater, except that the mounting of the proposed antenna may exceed the size limits set forth in this paragraph if necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable; or
- (4) the mounting of the proposed antenna would involve excavation outside the current Existing Structure site, defined as the current boundaries of the leased or owned property surrounding the Existing Structure and any access or utility easements currently related to the site.

Support Structure: A structure designed to support Telecommunications Facilities, including, but not limited to, Monopoles, Towers, and other freestanding or self-supporting structures.

Telecommunications Facility: Any unmanned facility established for the purpose of providing wireless transmission of voice, data, images or other information, including, but not limited to, cellular telephone service, personal communications service (PCS), and paging service. A Telecommunication Facility can consist of one or more Antennas and Accessory Equipment.

Tower: A lattice-type structure, guyed or freestanding, that supports one or more Antennas.

Sec. 78-501. Prohibition and Permit Requirements.

A. Prohibition and Permit Requirement. No Telecommunication Facilities or Support Structures, except for those which are expressly exempted, are allowed to be placed, constructed or modified in the City, unless they are properly permitted in accordance with the requirements of this Division 6. The permit process involves Administrative Review in all cases and either administrative permit issuance or denial by the Building Official or permit issuance or denial by the Council.

B. Exemptions. The following are exempt from this Division 6.

- (1) Ordinary Maintenance of Telecommunications Facilities and Support Structures.
- (2) Antennas used by residential households solely for broadcast radio and television reception, provided they are no more than 30 feet in height.
- (3) Satellite antennas used solely for residential or household purposes.
- (4) COWs placed within the City after a declaration by the Governor of an emergency or a disaster for so long as the disaster or emergency conditions exist.
- (5) HAM Radio operations facilities provided their antennas are no more than 50 feet in

height.

C. Administrative Review. All non-exempt matters must be administratively reviewed by the Building Official.

- (1) The Administrative Review process must be commenced by the applicant filing an application with the Building Official.
- (2) All applications must contain the following:
 - (a) Application for Building Permit form signed by applicant.
 - (b) Letter of authorization from property owner evidencing applicant's authority to pursue application.
 - (c) Site plans detailing proposed improvements, including anticipated future expansion, which complies with the City's existing site plan and other development requirements, as applicable.
 - (d) The fee, which shall be the same as the Buildings and Building Regulations fees listed in Appendix A of the City of Ingleside's Code of Ordinances, must be paid upon filing of the application.
 - (e) Number of proposed Antennas and Support Structures and the height of each above ground level.
 - (f) Line-of-sight diagram and photo simulation showing the proposed Antennas and Support Structure set against the skyline.

(g) Collocation is encouraged. New Support Structures shall not be built unless and until it is demonstrated that no existing structures can accommodate the applicant's needs, i.e. that collocation is not viable. If applicant proposes to collocate, an explanation of the proposal must be set forth. If applicant does not propose to collocate, applicant must provide an explanation justifying why collocation is not viable. This may include evidence that (1) no suitable Support Structures are located within the geographic area that meet applicant's engineering requirements, or (2) applicant's proposed Antenna would cause electromagnetic interference with the Antenna on the existing Support Structure, or (3) the antenna on the existing Support Structure would cause interference with the applicant's proposed antenna, or (4) the fees, costs or contractual provisions required by the owner of an existing Support Structure or to adapt an existing Support Structure for shared use are unreasonable, and/or (5) other factors that render existing Support Structures unsuitable.

(h) A list of the existing Support Structures considered as possible alternatives to the proposed location and a written explanation why the alternatives considered were either unavailable or not viable.

(i) For applications for New Support Structures, a statement that the proposed Support Structure will be made available for Collocation to other service providers at commercially reasonable rates.

(j) Stealth Telecommunication Facilities are encouraged. Such facilities are required, unless and until it is demonstrated by the applicant that stealth techniques

are not viable. If applicant proposes to adopt a stealth technique, an explanation of the proposal must be set forth. If applicant does not propose to adopt a stealth technique, applicant must provide an explanation justifying why it is not viable to do so.

(k) Statements which address all design elements and matters set forth under Sec. 78-502. General Standards and Design Requirements.

(l) A Statement as to whether the application is one which is within the ambit of the Administrative Approval Process of the Council Approval Process, which processes are hereinafter defined.

(3) Completion of Application. The Building Official will review the application for completeness. If determined to be incomplete, within thirty (30) days of the receipt of an application for Administrative Review the Building Official will inform the Applicant in writing of the specific reasons why the application is incomplete and does not meet the submittal requirements. The parties may agree upon an extension of time as to such 30 day period. Applicant, in such case, will be given a reasonable opportunity to complete the application.

D. Administrative Permit Approval.

(1) In the following cases the permitting authority is the Building Official. The Building Official may not vary or waive any requirement of this Division 6, unless and except to the extent such power is expressly in this Division 6 granted.

(a) Minor Modifications.

(b) Collocations.

(c) Approval of Antennas and Accessory Equipment which exceed the maximum building height limitations within a zoning district, provided they do not constitute a Substantial Increase.

(d) The placement of non-exempt COWs at a location for no more than 60 continuous days.

(2) The Building Official will issue a written decision granting or denying the application and, in the event of denial, stating the reasons for denial, within forty five (45) days after the date of submission of the completed application. The parties may agree upon an extension of time.

(3) Applicant may appeal a decision of the Building Official by filing written Notice of Appeal within 15 days after the decision appealed from: (a) to the Board of Adjustment on the basis of administrative error or for a variance; or (b) to the Planning and Zoning Commission in which event the case shall thenceforth be handled as would be an original proceeding before the Planning and Zoning Commission and the City Council wherein the Council is the permitting authority.

E. Council Permit Approval. As to all applications not within the ambit of Administrative Approval, the Council is the permitting authority.

(1) Telecommunications Facilities and Support Structures not expressly allowed to be permitted by Administrative Approval shall be allowed upon the granting of a Permit by the City Council after recommendation made by the Planning and Zoning Commission to

the Council and otherwise procedurally as in the case of zoning changes under Sections 78-51 and 78-52, subject to the terms and provisions of this Division 6, the procedures herein being intended to supplement and to be in addition to the procedures required under 78-51 and 52. The Council may waive or vary any of the requirements set forth in this Division in any particular case.

(2) The City Council will issue a written decision granting or denying the application within ninety (90) days in the case of a collocation decision or within one hundred-fifty (150) days in all other cases after the date of submission of a completed application to the Building Official. An extension of time may be agreed upon by the Parties.

F. Consequences of Failure to Act within time limits. The Federal Telecommunications Act of 1996 requires that a city act on an application within a reasonable time after a complete application is filed. Federal law presumes that 90 days for collocation cases and 150 days for all other cases are reasonable times. Federal law further provides that a person adversely affected by a City's final action or by its failure to act within the 90 or 150 day time frames may, within 30 days after such action or failure to act, commence an action in court. However, the failure to act within those specific periods of time merely gives rise to a rebuttable presumption that the government unreasonably delayed. It does not result in deemed approval. The 150 and 90 day time lines operate independently of State and local statutes and ordinances and only serve to interpret the federal requirement of action within a reasonable period of time.

Sec. 78-502. General Standards and Design Requirements.

The following conditions shall apply and may be in addition to any other conditions as may be

applicable:

- (1) Stealth Telecommunications facilities are encouraged and such designs shall be required where viable.
- (2) The compound area surrounding the Support Structure must be of sufficient size to accommodate Accessory Equipment for at least two telecommunications providers;
- (3) Collocation is encouraged and required where viable. Telecommunications Facilities shall be designed to accommodate the Collocation of other Antennas whenever viable;
- (4) Setbacks
 - (a) Property Line. Support Structures shall be set back from all property lines at least a distance equal to their height measured from the ground to its highest point.
 - (b) Residential Dwellings. Support Structures shall be set back from all off-site residential dwellings a distance equal to the height of the structure.
 - (c) Accessory Equipment. Accessory Equipment shall be set back from all property lines in accordance with the minimum setback requirements in the underlying zoning district.
- (5) Height. Support Structures and antennas shall be designed to be the minimum combined height needed to meet the service objectives of the applicant and anticipated collocators and none shall exceed 80 feet in height.

- (6) Lighting and Marking. Support Structures and Antennas shall not be illuminated or marked unless required by the Federal Communications Commission (FCC) or the Federal Aviation Administration (FAA) or other applicable federal or state agency.
- (7) Signage. Signs located at the Telecommunications Facility shall be limited to ownership and contact information, FCC antenna registration number (if required) and any other information as required by government regulation. Commercial advertising is strictly prohibited.
- (8) Landscaping. Landscaping requirements may be imposed for sites that are visible from the public right-of-way or adjacent property.
- (9) Fencing. Ground mounted Accessory Equipment and Support Structures shall be secured and enclosed by a security fence not less than six (6) feet in height.
- (10) Licensed Carrier. The facility must be used by a licensed wireless carrier.
- (11) Prohibited Locations. No tower or monopole or other free standing self supporting Support Structure shall be allowed within the following locations:
- (a) Within 600 feet of Highway 361 right-of-way extending from the east city limits line to the west city limits line;
 - (b) With 600 feet of Highway 1069 right-of-way extending from the south city limits line to the north city limits line;
 - (c) Within 500 feet of any school grounds or property, public park or areas of organized outdoor activities for children;

(d) Within any residential (single, duplex or multi-family) zoning district or within 200 feet of the boundary of such a zoning district; or

(e) Within 1000 feet of another Telecommunications Tower, monopole, or other free standing self supporting Support Structure.

Sec. 78-503. Abandonment. In the event the use of any Telecommunication Facility, including any Support Structure, has been discontinued for a period of one hundred eighty (180) consecutive days, the Support Structure shall be deemed to be abandoned. Determination of the date of abandonment shall be made by the Building Official. The owner/operator of the Support Structure shall remove same within ninety (90) days of receipt of notice from the Building Official of such abandonment. If such Support Structure is not removed within said ninety (90) days, the Building Official may cause such Support Structure to be removed at the owner's expense.

SECTION 2. EFFECTIVE DATE. As provided by Article III, Section 3.11.C of the Charter of the City of Ingleside, this ordinance shall be effective upon adoption and, in addition, if any penalty, fine or forfeiture is imposed by this ordinance, then this ordinance shall be effective only after publication of this ordinance in its entirety or in summary form once in the official newspaper of the City of Ingleside.

SECTION 3. READING. As provided by Article III, Section 3.11.B of the Charter of the City of Ingleside, this ordinance or the caption of it shall be read at three city council meetings with at least two weeks elapsing between each reading.

SECTION 4. SEVERANCE. If any part of this ordinance is invalid or void or is declared to be so, then said part shall be severed from the balance of this ordinance and said invalidity shall not affect

the balance of this ordinance, the balance of the ordinance to be read as if said invalid or void portion thereof were not included.

SECTION 5. PUBLICATION. If and as required by Article III, Section 3.11.C of the Charter of the City of Ingleside, the caption of this ordinance shall be published one time in the official newspaper of the City of Ingleside, San Patricio) County, Texas.

PASSED, ORDAINED, APPROVED AND ADOPTED this _____ day of _____, 2014.

Pete Perkins, Mayor
City of Ingleside, Texas

Attest:

City Secretary
City of Ingleside, Texas

First Reading: _____
Second Reading: _____